

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CAMPAIGN FOR SOUTHERN EQUALITY, ET AL.

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:15cv578-DPJ-FKB

**The MISSISSIPPI DEPARTMENT OF HUMAN
SERVICES, ET AL.**

DEFENDANTS

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Defendants the Mississippi Department of Human Services, Richard Berry, in his official capacity as Executive Director of the Mississippi Department of Human Services, Phil Bryant, in his official capacity as Governor of the State of Mississippi, and Jim Hood, in his official capacity as Mississippi Attorney General (“defendants”) move the Court to dismiss this lawsuit pursuant to Fed. R. Civ. P. 12(b)(1) and state:

1. On August 12, 2015, plaintiffs filed their Complaint for Declaratory and Injunctive Relief (“complaint”) against the defendants contending Mississippi Code Section 93-17-3(5) violates the United States Constitution’s Equal Protection and Due Process Clauses. [Complaint, Docket No. 1].
2. The complaint should be dismissed for lack of subject matter jurisdiction as no Article III case or controversy exists due to a lack of standing.
3. Alternatively, the complaint should be dismissed for lack of subject matter jurisdiction due to the defendants’ Eleventh Amendment immunity.
4. Defendants’ motion is based on the foregoing, their separately submitted Memorandum of Authorities, and the Declaration of Mark Smith, affixed hereto as Exhibit “A.”

FOR THESE REASONS, and those set forth in their separate Memorandum of Authorities, defendants jointly and respectfully request that the Court enter an order dismissing the plaintiffs' Complaint for Declaratory and Injunctive Relief.

THIS the 2nd day of September, 2015.

Respectfully submitted,

JIM HOOD, in his official capacity
as Mississippi Attorney General

By: S/Justin L. Matheny
Justin L. Matheny (Bar No. 100754)
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205
Telephone: (601) 359-3680
Facsimile: (601) 359-2003
jmath@ago.state.ms.us

Counsel for Attorney General Jim Hood

AND

MISSISSIPPI DEPARTMENT OF HUMAN
SERVICES, RICHARD BERRY, in his official
capacity as Executive Director of the
Mississippi Department of Human Services,
and PHIL BRYANT, in his official capacity as
Governor of the State of Mississippi

By: S/Tommy Goodwin
Tommy Goodwin (Bar No. 100791)
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205
Telephone: (601) 359-3680
Facsimile: (601) 359-2003
tgood@ago.state.ms.us

*Counsel for MDHS, Executive Director
Richard Berry, and Governor Phil Bryant*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed with the Clerk of Court using the Court's ECF system and thereby served on all counsel of record who have entered their appearance in this action to date.

THIS the 2nd day of September, 2015.

S/Justin L. Matheny
Justin L. Matheny